

Serial No.: 10/099,989  
Atty. Docket No.: P67695US0

### REMARKS

The Final Office Action mailed December 10, 2004, has been carefully reviewed and by this Amendment, claims 2, 3 and 7-10 have been canceled and claims 1 and 6 have been amended. Claims 1 and 6 are pending in the application.

The Examiner rejected claims 1-3, 9 and 10 under 35 U.S.C. 112, first paragraph, as being directed to subject matter not fully set forth in the description. By this Amendment, Applicant has amended the specification to include in written text what is now shown in Figures 4 and 4A, namely that only two lines of stitching are used and that they are substantially parallel to one another and adjacent the longitudinal edges of the band. In that the drawings are part of the specification and such drawings, as originally filed, fully set forth the subject matter herein added to the specification, such amendment to the specification merely represents the incorporation of written description corresponding to the drawings and therefore is not new matter.

The Examiner rejected claim 6 under 35 U.S.C. 102 (b) as being anticipated by U.S. Patent No. 5,613,248 to Young ("Young '248"), and rejected claims 1-3 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,131,202 to Yan in view of U.S. Patent No. 6,546,563 to Young ("Young '563"). The Examiner also rejected claims 7-10 under 35 U.S.C. 103(a) as being unpatentable over Young '248 in view of Young '563.

With this amendment, Applicant has amended claim 6 to incorporate the subject matter of claims 7-10, and has amended claim 1 to incorporate claims 2 and 3; claims 2, 3 and 7-10 have been canceled.

As set forth in amended claim 1, the present invention is directed to a cap having a sweatband made of a fabric portion woven of a spun thread material having quick perspiration absorbency to form a tubular channel which is flattened and sewn with only two substantially parallel lines, each of the stitching lines extending along and adjacent a respective longitudinal edge of the tubular channel, as clearly shown in Figures 4 and 4A. This combination of elements is not shown or suggested by the prior art.

Yan is directed to a multi-axially stretchable fabric cap having a headband of foam synthetic material in order to alleviate pressure on the wearer's head. The sweatband is made of the same material as the rest of the cap in order to ensure uniform stretchability (see column 2, lines 27-40). During production, the sweatband is sewn to the bottom of the crown along one edge and then folded upwardly inside the cap and tacked to the crown using thread tacks (see column 3, lines 26-29).

Young '563 teaches a woven elastic band section for use with headwear, the band being stretchable and including a plurality of fiber bundles which extend along the longitudinal direction of the band and provide sweat absorption. The band is not disclosed as being tubular and there is no suggestion of such a construction, particularly given that during manufacture, the fiber bundles are woven while stretching the band longitudinally (see column 3, lines 5-20); a tubular band would greatly complicate the weaving process in that the opposing side of the tubular structure would be immediately adjacent the side being woven. In addition, since the fiber bundles provide the moisture absorption function, there is no incentive to use a tubular structure with its inherent

two-layer construction as this doubling of layers would be not only unnecessary but likely to result in excess thickness when taken in conjunction with two layers of fiber bundles.

As for the combination of the art proposed by the Examiner, the expressed purpose of Yan is to avoid any pressure points on the wearer's head (column 2, lines 19-26). The headband taught by Yan is best suited to achieving this purpose, having a smooth uniform surface facing the wearer's head (the stitching used to attach the headband being folded under as already described). Furthermore, the foam layer inside the headband provides maximum cushioning with the greatest degree of uniformity through its uninterrupted construction. Accordingly, there would be no incentive to add two lines of stitching to the edges of the headband as suggested by the Examiner. Rather, the addition of such lines of stitching would degrade the performance of the Yan headwear, reducing the flexibility and cushioning of the foam through compaction thereof along both edges. Nor would there be any incentive to incorporate the woven process with fiber bundles of Young '563 for the same reason, namely negative impact upon the comfort and cushioning of the existing foam-layer band. Finally, Yan has no need of two lines of stitching to provide a guideline for attachment to the crown portion in that the headband is attached to the bottom of the crown first and folded up, as already described. Thus, for at least the foregoing reasons, it would not have been obvious to modify Yan with Young '563 in the manner set forth by the Examiner. Instead, the present invention as claimed is patentable over the prior art.

With respect to the present invention as set forth in amended claim 6, the sweatband includes a fabric portion woven, of a spun thread material having quick perspiration absorbency, to form a tubular channel so that two layers of the tubular fabric portion lie against one another and

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provide moisture absorbency when the sweatband is in use. The sweatband is sewn with only two substantially parallel lines of stitching along longitudinal edges thereof to provide a guideline for attaching the sweatband to the crown main body of a baseball-style cap. This also is not shown or suggested by the prior art of Yan and Young '563 for the same reasons as already discussed in connection with claim 1.

In addition, claim 6 is not shown or suggested by Young '248. Young '248 discloses a replaceable headband for use in various headwear. A plastic retaining strip 14 is passed through the band and snapped into place inside the hat; by unsnapping one end, the band may be removed and another band inserted around the retaining strip.

There is nothing in Young '248 that would suggest any benefit to stitching the headband along its longitudinal edges. To the contrary, this would complicate the insertion process as the band would need to be properly aligned to place the sewn portions over the edges of the strip. Should the band shift, either during insertion or use, the sewn edges could protrude against the wearer's head, causing discomfort. In any event, that portion of the headband suited for comfortable placement against the wearer's head would be reduced by the area of the sewn portions.

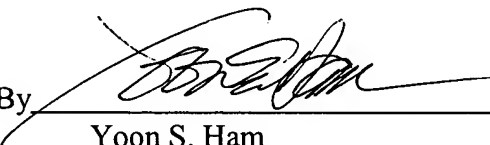
For at least the foregoing reasons, claims 1 and 6 are allowable over the prior art. Furthermore, the amendments set forth herein do not present new issues requiring further consideration and are therefore proper after Final Action. Favorable consideration and entry thereof is respectfully requested.

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With the foregoing, the application is in condition for allowance. Should the Examiner have any questions or comments, the Examiner is cordially invited to telephone the undersigned attorney so that the present application can receive an early Notice of Allowance.

Respectfully submitted,

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